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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1514

BALTIMORE REBUILDERS, INC.,
Petitioner,

v.

THE NATIONAL LABOR RELATIONS BOARD,

and

IAM NATIONAL PENSION FUND, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE IAM NATIONAL PENSION FUND IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 39a) is reported at 611 F.2d 1372. The decision and order of the National Labor Relations Board (Pet. App. 3a) are reported at 235 NLRB No. 209.

QUESTION PRESENTED

Whether the court of appeals correctly concluded, on the basis of uncontroverted evidence and unchallenged findings of fact, that a jointly-trusteed labor manage-

ment pension fund did not violate Sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, 29 U.S.C. §§ 158(b)(1)(A) and 158(b)(2), by maintaining and enforcing a pension fund rule requiring the cancellation of covered employees' past service credits upon the termination of their employer's contractual obligation to contribute to the fund.

STATUTE INVOLVED

Relevant provisions of 29 U.S.C. §§ 157 and 158 are set forth in the Appendix to the Petition at 1a.

STATEMENT

The IAM National Pension Fund (the Fund) is a jointly-trusteed labor-management pension trust established in 1960 by the International Association of Machinists and Aerospace Workers, AFL-CIO (the IAM), and various employers of employees who are represented for collective bargaining purposes by constituent local unions affiliated with the IAM. As required by Section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. § 186(c)(5), the Fund is administered by a board of trustees composed of equal numbers of employer and IAM representatives. Consistent with Section 302(c)(5), employers may make, and the Fund may accept, pension contributions only when "the detailed basis on which such payments are to be made is specified in a written agreement with the employer," and the monies thus contributed must be used by the Fund "for the sole and exclusive benefit of the employees . . . and their families and dependents. . . ." 29 U.S.C. § 186(c)(5).

As the court of appeals found, the Fund is not administered by the IAM. It is operated by a full time administrative staff, under the general policy guidance

and direction of the Board of Trustees (Pet. App. 40a-41a; 611 F.2d at 1374), and is generally subject to substantive federal statutory regulation (Pet. App. 41a; 611 F.2d at 1374).[1]

Beginning in 1972 and continuing for slightly less than four years, petitioner was under a collectively-bargained contractual obligation to make pension contributions to the Fund's Benefit Plan A. The collective bargaining agreement in which petitioner had assumed the obligation to contribute to the Fund expired in January, 1976 and was not renewed. Thereafter, in April, 1976, the IAM local union which had previously negotiated the agreements requiring petitioner to contribute to the Fund lost a decertification election in petitioner's establishment, permanently ending the collective bargaining relationship between petitioner and that local (Pet. App. 46a-47a; 611 F.2d at 1377).

Upon learning of the termination of petitioner's contractual obligation to contribute to the Fund, the Fund invoked a provision of its Plan A Rules under which all of petitioner's still-active employees lost the right to claim pension credit for any of the time spent in petitioner's employ *before* petitioner began to contribute to the Fund. In so acting, the Fund applied the rule equally to all of petitioner's employees, and consistently with the way it is uniformly applied in similar situations (Pet. App. 45a; 611 F.2d at 1376). Moreover, only past service credits were cancelled. Credits earned for the time *after* petitioner began contributing to the Fund are not affected by the applicable rule and were not affected in this case (Pet. App. 41a-42a; 611 F.2d at 1375). Similarly unaffected by the rule are pensions already in effect before the employer's obligation to contribute ends (Pet. App. 41a, 45; 611 F.2d at 1374, 1376, n. 11).

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[1] *See* Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*

On petitioner's charge, the General Counsel of the National Labor Relations Board issued a complaint alleging, in substance, that the Fund acted as agent of the IAM when it invoked the Plan A rule requiring cancellation of petitioner's employees' past service credits, and that, because that cancellation occurred as a result of a decertification election, it violated Sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, 29 U.S.C. §§ 158(b)(1)(A) and 158(b)(2).

Assuming, without deciding, that the Fund had, in fact, acted as agent of the unions,[2] the Administrative Law Judge, the Board, and the court of appeals all found that the challenged pension plan rules had been adopted to advance a legitimate business objective of the Fund, that those rules evidenced no discriminatory motive or intent, and that they had been uniformly and nondiscriminatorily applied in this case to advance the purpose for which they had been adopted. Based upon those findings, both the Board and the court below concluded that adoption and enforcement of the challenged pension fund rules did not violate the Act (Pet. App. 30a-33a, 50a-54a; 611 F.2d at 1378-1380).

REASONS FOR DENYING THE WRIT

We think it plain that the petition in this case presents no issue meriting this Court's attention. Both the Board and the court below thoroughly examined the record made before the Administrative Law Judge, both carefully analyzed the facts demonstrated by that record, and both correctly applied the pertinent legal standards to the facts thus found. Petitioner has identified no error in

[2] It was the Fund's position before the Board and in the court below that, as a matter of law, no agency relationship existed here and that consequently the Board lacked jurisdiction in the case. Neither the Board nor the court below found it necessary to address the agency issue, and it is not presented by this petition.

the conclusion produced by this process, and thus far concurred in unanimously by the Administrative Law Judge, three members of the Board, and three judges of the court of appeals, that Sections 8(b)(1)(A) and 8(b)(2) of the Act were not violated by the Fund when it cancelled the past service credits of petitioner's employees upon the termination of petitioner's obligation to contribute to the Fund.

1. The court below began its analysis of the issue before it with a careful examination of the Fund, and of the rules of the Fund's Benefit Plan A here in issue. With ample, thoroughly referenced, record support, the court found that the Fund was "created in 1960 to provide retirement benefits to employees who are represented by the Union's locals[,] [that it consists of] approximately 2,000 employers making contributions for 90,000 union represented employees[,]" that it is controlled and operated independently of the IAM by a board of trustees consisting of union and employer representatives in equal numbers, that its structure is consistent with the requirements of Section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. § 186(c)(5), and that its operations are governed by the regulatory standards embodied in the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.* (Pet. App. 40a-41a; 611 F.2d at 1374.)

The court described the structure under which pension "credits" are accrued in the Fund's Benefit Plan A as one which

> allows full scale pension benefits to covered employees on the basis of their total years of service without regard to when their employer began making contributions to the Fund. (Pet. App. 41a; 611 F.2d at 1374)

Under this system,

> [t]wo kinds of work credits may be applied toward a pension entitlement. "Past Service Credits" (foot-

note omitted) are granted on a unit-wide basis when an employer makes its first contribution to the Fund. . . . When contributions cease, these credits are cancelled. "Future Service Credits" (footnote omitted) are earned for each month the employee works after that date so long as the employer continues making contributions for the unit.

. . . [T]his scheme of earned and unearned credits allowed older, long service employees to receive full pension benefits, although their employer's payments over the years remaining before they retired could not be expected to pay for the Fund's liability for their pensions. (Pet. App. 41a-42a; 611 F.2d at 1375).

The Fund's exposure to the unfunded liability represented by these past service, or "unearned" credits

> is greatest when the employer commences coverage and diminishes as contributions continue since all credits accruing after the initial contribution date are earned Future Service Credits. (Pet. App. 42a; 611 F.2d at 1375).

To protect itself against the risk posed by the termination of an employer's contributions, the Fund has adopted rules providing that

> when an employer's participation in the Fund terminates (and its contributions necessarily cease), all past service credits are cancelled for active employees (footnote omitted). On the date contributions cease these provisions take away the same benefit that was granted on the date contributions began.
>
> Cancellation is effective on a unit-wide basis and is automatic. No discretion is allowed to the Fund to prevent cancellation for any employee or unit. Active employees are affected regardless of union affiliation or activity. All units suffer the same consequences, whether or not they continue to be represented by a local union. (Pet. App. 43a-45a; 611 F.2d at 1375-1376).[3]

The court's comprehensive, carefully detailed description of the nature of the Fund and the structure of its pension plan rules is fully supported by the record. As that description demonstrates, the past service cancellation provisions in the Fund's rules are an important part of a carefully balanced system of credits and benefits designed to preserve and protect the Fund's ability to meet its obligations to the thousands of covered employees who will rely upon the Fund to provide them with retirement income.

Petitioner has pointed to nothing in the record to support its grossly misleading, transparently political assertions that the Fund is but a cat's paw for "union bosses" (Pet. 8), or that it is "essentially instituted and run under the auspices of the Union" (Pet. 3). Those and similar assertions were summarily rejected below, and they are no more credible in this Court than they were below.[4]

2. The court of appeals' legal analysis is, we believe, manifestly every bit as correct as is its factual assessment of the record before it. Recognizing, as this Court has, that not every encouragement or discouragement of union membership or union representation vio-

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[3] The full text of the cancellation Rule in effect when this case arose appears at App. Ex. 72-74.

[4] Petitioner's insertion of the symbol "(AFL-CIO)" after the name of the Fund in the caption of its petition, and its unexplained assertion (Pet. 3) that the value of this Fund's assets may be determined by reference to an LM-2 Report are illustrative of the lengths to which petitioner is willing to resort in its effort to mislead this Court. Since the Fund is not a labor organization, it is not and could not become a member of the AFL-CIO, nor is it required to file LM-2 Reports.

lates the Act,[5] the court examined the complained-of rules to determine whether they revealed a "true purpose" or "real motive"[6] to discriminate against employees who refused to support the union.[7] The court found, on the basis of the Fund Administrator's unchallenged testimony, that the "true purpose" for which the cancellation rules were adopted "was to increase the incentive for employees covered by the Fund to prevent, whenever possible, withdrawal from the Fund by active employers" (Pet. App. 50a; 611 F.2d at 1378). That purpose being a legitimate one, and no "affirmative showing of improper motivation" having been attempted, *NLRB* v. *Great Dane Trailers, Inc.*, 388 U.S. 26, 34 (1967), the court concluded (Pet. App. 50a; 611 F.2d at 1378) that no evidence of an intention to violate the Act had been adduced.

Nor could the court discern any unlawfully discriminatory or coercive effect in the rules themselves:

> They operate evenly against all unit employees regardless of their personal preference to keep or dismiss the union. They operate automatically when the possibility of continuing contributions is lost. (Pet. App. 50a; 611 F.2d at 1378)

This uniform, nondiscretionary application of the past service cancellation provisions, in every situation where an active employer's obligation to contribute to the Fund ceases, conclusively demonstrated, in the court's view, the absence of any unlawfully discriminatory or coercive

[5] *Teamsters Local 357* v. *NLRB*, 365 U.S. 667, 679-680 (1961) (Mr. Justice Harlan concurring).

[6] *Radio Officers* v. *NLRB*, 347 U.S. 17, 43 (1954).

[7] As we have noted, *supra*, p. 4, the court assumed for purposes of its analysis that the Fund could be considered the agent of the Union (Pet. App. 40a, n. 1; 611 F.2d at 1374, n. 4). The court noted the Fund's vigorous disagreement with that assumption, a position the Fund has not abandoned.

effect. *See Rosen* v. *NLRB*, 455 F.2d 615 (3rd Cir. 1972); *Local 167, Progressive Mine Workers* v. *NLRB*, 422 F.2d 538 (7th Cir. 1970), *cert. denied* 399 U.S. 905 (1970). The court noted, moreover, that Congress has authorized plans such as this Fund to protect themselves in precisely the manner about which petitioner has complained:

> [Congress] has authorized just such a scheme and we do not think a reasonable limitation on the unfunded liability represented by it can violate the Act. *See* 29 U.S.C. § 1001(b). (Pet. App. 51a; 611 F.2d at 1379)

In sum, the court found in the Fund's past service cancellation provisions a reasonable system for limiting the Fund's exposure to unfunded liability. The court further found that those provisions are invoked in every circumstance in which the employer's participation ends through the voluntary acts of the collective bargaining parties, and that decertification is only one such circumstance.[8] The court's analysis is entirely consistent with controlling decisions of this Court, and presents no occasion for this Court's review.

[8] Petitioner's assertion (Pet. 11) that decertification is, in fact, the only circumstance in which cancellation occurs is supported neither by the record nor by the real-world experience of this Fund. *See* e.g., *Central Tool Company* v. *IAM National Pension Fund*, CA No. 79-2754, pending in the District Court for the District of Columbia, in which this Fund cancelled past service credits after the employer and the IAM local union representing its employees negotiated a renewal collective bargaining agreement under which the employer ceased to be obligated to contribute to this Fund.

CONCLUSION

For all the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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